

Nov 06, 2019

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TRAVIS C.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No: 1:18-CV-03178-RHW

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 14, 15. Plaintiff brings this action seeking judicial review pursuant to 42 U.S.C. § 405(g) of the Commissioner of Social Security's final decision, which denied his application for Disability Insurance Benefits under Title II of the Social Security Act, 42 U.S.C. § 401-434, and his application for Supplemental Security Income under Title XVI of the Act, 42 U.S.C. § 1381-1383F. *See* Administrative Record (AR) at 1-2, 27. After reviewing the administrative record and briefs filed by the parties, the Court is now fully informed. For the reasons set forth below, the

1 Court **GRANTS** Defendant's Motion for Summary Judgment and **DENIES**
2 Plaintiff's Motion for Summary Judgment.

3 **I. Jurisdiction**

4 Plaintiff filed his applications for Disability Insurance Benefits and
5 Supplemental Security Income on February 6, 2015. *See* AR 15, 82. In both
6 applications, Plaintiff's initial alleged onset date of disability was September 1,
7 2012.¹ AR 15, 82, 219, 226. Plaintiff's applications were initially denied on May
8 29, 2015, AR 138-51, and on reconsideration on August 18, 2015. AR 153-66.
9 Plaintiff then filed a request for a hearing on October 1, 2015. AR 168-69.

10 Administrative Law Judge ("ALJ") Eric Basse held a hearing on March 10,
11 2017. AR 36-79. On September 13, 2017, the ALJ issued a decision concluding
12 that Plaintiff was not disabled as defined in the Act and was therefore ineligible for
13 disability benefits or supplemental security income. AR 15-27. On August 13,
14 2018, the Appeals Council denied Plaintiff's request for review, AR 1-6, thus
15 making the ALJ's ruling the final decision of the Commissioner. *See* 20 C.F.R. §
16 404.981.

17 On September 17, 2018, Plaintiff timely filed the present action challenging
18 the denial of benefits. ECF No. 1. Accordingly, Plaintiff's claims are properly
19 before this Court pursuant to 42 U.S.C. § 405(g).

20 _____
¹ Plaintiff later amended his alleged onset date to November 1, 2015. AR 15, 61.

II. Five-Step Sequential Evaluation Process

The Social Security Act defines disability as the “inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). A claimant shall be determined to be under a disability only if the claimant’s impairments are so severe that the claimant is not only unable to do his or her previous work, but cannot, considering claimant’s age, education, and work experience, engage in any other substantial gainful work that exists in the national economy. 42 U.S.C. § 1382c(a)(3)(B).

The Commissioner has established a five-step sequential evaluation process for determining whether a claimant is disabled within the meaning of the Act. 20 C.F.R. §§ 404.1520(a)(4), 416.920(a)(4); *Lounsbury v. Barnhart*, 468 F.3d 1111, 1114 (9th Cir. 2006).

Step one inquires whether the claimant is presently engaged in “substantial gainful activity.” 20 C.F.R. §§ 404.1520(b), 416.920(b). Substantial gainful activity is defined as significant physical or mental activities done or usually done for profit. 20 C.F.R. §§ 404.1572, 416.972. If the claimant is engaged in substantial activity, he or she is not entitled to disability benefits. 20 C.F.R. §§ 404.1571, 416.920(b). If not, the ALJ proceeds to step two.

1 Step two asks whether the claimant has a severe impairment, or combination
2 of impairments, that significantly limits the claimant's physical or mental ability to
3 do basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). A severe
4 impairment is one that has lasted or is expected to last for at least twelve months,
5 and must be proven by objective medical evidence. 20 C.F.R. §§ 404.1508-09,
6 416.908-09. If the claimant does not have a severe impairment, or combination of
7 impairments, the disability claim is denied and no further evaluative steps are
8 required. Otherwise, the evaluation proceeds to the third step.

9 Step three involves a determination of whether one of the claimant's severe
10 impairments "meets or equals" one of the listed impairments acknowledged by the
11 Commissioner to be sufficiently severe as to preclude substantial gainful activity.
12 20 C.F.R. §§ 404.1520(d), 404.1525, 404.1526 & 416.920(d), 416.925, 416.926;
13 20 C.F.R. § 404 Subpt. P. App. 1 ("the Listings"). If the impairment meets or
14 equals one of the listed impairments, the claimant is *per se* disabled and qualifies
15 for benefits. *Id.* If the claimant is not *per se* disabled, the evaluation proceeds to the
16 fourth step.

17 Step four examines whether the claimant's residual functional capacity
18 enables the claimant to perform past relevant work. 20 C.F.R. §§ 404.1520(e)-(f),
19 416.920(e)-(f). If the claimant can still perform past relevant work, the claimant is
20 not entitled to disability benefits and the inquiry ends. *Id.*

1 Step five shifts the burden to the Commissioner to prove that the claimant is
2 able to perform other work in the national economy, taking into account the
3 claimant's age, education, and work experience. *See* 20 C.F.R. §§ 404.1512(f),
4 404.1520(g), 404.1560(c) & 416.912(f), 416.920(g), 416.960(c). To meet this
5 burden, the Commissioner must establish that (1) the claimant is capable of
6 performing other work; and (2) such work exists in "significant numbers in the
7 national economy." 20 C.F.R. §§ 404.1560(c)(2); 416.960(c)(2); *Beltran v. Astrue*,
8 676 F.3d 1203, 1206 (9th Cir. 2012).

9 III. Standard of Review

10 A district court's review of a final decision of the Commissioner is governed
11 by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited, and the
12 Commissioner's decision will be disturbed "only if it is not supported by
13 substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1144,
14 1158-59 (9th Cir. 2012) (citing § 405(g)). In reviewing a denial of benefits, a
15 district court may not substitute its judgment for that of the ALJ. *Matney v.*
16 *Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992). When the ALJ presents a reasonable
17 interpretation that is supported by the evidence, it is not the role of the courts to
18 second-guess it. *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001). Even if
19 the evidence in the record is susceptible to more than one rational interpretation, if
20 inferences reasonably drawn from the record support the ALJ's decision, then the

1 court must uphold that decision. *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir.
2 2012); *see also Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002).

3 **IV. Statement of Facts**

4 The facts of the case are set forth in detail in the transcript of proceedings
5 and only briefly summarized here. Plaintiff was 39 years old on the amended
6 alleged date of onset, which the regulations define as a younger individual. AR 25;
7 *see* 20 C.F.R. § 404.1563. He completed high school and can communicate in
8 English. AR 25, 40, 598. His work history consists primarily of running a deli and
9 working in a retail meat department. AR 274, 598.

10 **V. The ALJ's Findings**

11 The ALJ determined that Plaintiff was not under a disability within the
12 meaning of the Act at any time from November 1, 2015 (the amended alleged
13 onset date) through September 13, 2017 (the date the ALJ issued his decision). AR
14 27.

15 **At step one**, the ALJ found that Plaintiff had not engaged in substantial
16 gainful activity since the alleged onset date. AR 18.

17 **At step two**, the ALJ found Plaintiff had the following severe impairments:
18 obesity, history of hernias, osteoarthritis, fibromyalgia syndrome by report, major
19 depressive disorder, and posttraumatic stress disorder. *Id.*

1 **At step three**, the ALJ found that Plaintiff did not have an impairment or
2 combination of impairments that met or medically equaled the severity of one of
3 the listed impairments in 20 C.F.R. § 404, Subpt. P, Appendix 1. AR 18-19.

4 **At step four**, the ALJ found that Plaintiff had the residual functional
5 capacity to perform light exertion work. AR 19. However, the ALJ found that
6 Plaintiff had a number of additional limitations, which included: he could lift and
7 or carry 20 pounds occasionally and 10 pounds occasionally²; he could stand and
8 or walk 2 hours in an 8-hour workday; he could sit 8 hours in an 8-hour workday
9 with normal customary work breaks; he could occasionally climb ramps and stairs;
10 he was limited to no climbing of ladders, ropes, or scaffolds; he could occasionally
11 balance and kneel; he was limited to no crouching, stooping, and crawling; he was
12 limited to frequent handling with the bilateral upper extremities; he was limited to
13 no concentrated exposure to hazards; he was limited to simple, routine tasks and
14 well-learned familiar detailed tasks; he could persist with customary breaks during
15 the workday; he could keep to a schedule and maintain regular attendance; and he
16 could complete a normal workweek without special accommodation. AR 19.

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19 ² Though the decision states “lift and or carry 20 pounds occasionally and 10
20 pounds occasionally,” based on the statutory definition of light work at 20 C.F.R. §
404.1567(b) and the hypothetical posed by the ALJ at the hearing (AR 73), it is
presumed the ALJ intended to state “10 pounds *frequently*.”

1 The ALJ determined Plaintiff was unable to perform his past relevant work
2 as a meat clerk, stock clerk, food service manager, and cook. AR 25.

3 **At step five**, the ALJ found that in light of Plaintiff's age, education, work
4 experience, and residual functional capacity, there were jobs that existed in
5 significant numbers in the national economy that he could perform. AR 25. These
6 included production solderer, electrical accessories assembler, touchup screener,
7 cutter and paster, and table worker. AR 26.

8 **VI. Issues for Review**

9 Plaintiff argues that the Commissioner's decision contains legal error and is
10 not supported by substantial evidence. Specifically, he argues the ALJ: (1) made
11 ambiguous step 2 findings regarding fibromyalgia and failed to account for
12 fibromyalgia in subsequent steps; (2) improperly rejected medical opinion
13 evidence and gave undue weight to the non-examining state agency doctors; (3)
14 failed to follow agency rules regarding the evaluation of obesity; (4) erred in
15 rejecting Plaintiff's symptom testimony; and (5) made improper step 5 findings.
16 ECF No. 14 at 1-2.

17 **VII. Discussion**

18 **A. The ALJ did not err in the evaluation of Plaintiff's fibromyalgia**

19 Plaintiff argues the ALJ made ambiguous step two findings when he
20 indicated Plaintiff's fibromyalgia was "by report," and argues the ALJ erred in

1 failing to account for fibromyalgia in the subsequent findings, as required by
2 Social Security Ruling 12-2p. ECF No. 14 at 5-8.

3 At step two in the five-step sequential evaluation for Social Security cases,
4 the ALJ must determine whether a claimant has a medically severe impairment or
5 combination of impairments. An impairment is found to be not severe “when
6 medical evidence establishes only a slight abnormality or a combination of slight
7 abnormalities which would have no more than a minimal effect on an individual's
8 ability to work.” *Yuckert v. Bowen*, 841 F.2d 303, 306 (9th Cir. 1988) (quoting
9 SSR 85-28). Step two is generally “a de minimis screening device [used] to
10 dispose of groundless claims.” *Webb v. Barnhart*, 433 F. 683, 687 (9th Cir. 2005).

11 In making this argument, Plaintiff asserts the ALJ erred in finding
12 “fibromyalgia by report,” and engages in an extensive discussion of the evidence
13 supporting the diagnosis. ECF No. 14 at 5-7. The Court finds no error, as the ALJ
14 included fibromyalgia as a severe impairment. Plaintiff’s assertion that the ALJ
15 failed to make mention of fibromyalgia at the subsequent steps of the evaluation
16 process fails to identify any error with specificity. The ALJ discussed the treatment
17 records and the opinion evidence. Plaintiff does not identify any credited limitation
18 associated with fibromyalgia that was not considered by the ALJ and incorporated
19 into the RFC. *See Stout v. Comm’r of Soc. Sec. Admin.*, 454 F.3d 1050, 1055 (9th
20

1 Cir. 2006); *Burch v. Barnhart*, 400 F.3d 676, 682 (9th Cir. 2005). The ALJ's
2 findings regarding fibromyalgia are legally sufficient.

3 **B. The ALJ did not err in weighing the medical opinion evidence**

4 Plaintiff argues the ALJ erred in rejecting opinions from Plaintiff's treating
5 rheumatologist, Dr. Byrd, the psychological consultative examiner, Dr. Sawyer,
6 and Plaintiff's treating counselor, Ms. Damstedt, and asserts the ALJ gave undue
7 weight to the non-examining opinions from the state agency doctors. ECF No. 14
8 at 8-15.

9 Social Security's regulations distinguish among the opinions of three types
10 of physicians: (1) those who treat the claimant (treating physicians); (2) those who
11 examine but do not treat the claimant (examining physicians); and (3) those who
12 neither examine nor treat the claimant but who review the claimant's file (non-
13 examining physicians). *Holohan v. Massanari*, 246 F.3d 1195, 1201-02 (9th Cir.
14 2001); *see* 20 C.F.R. § 404.1527(c)(1)-(2). Generally, a treating physician's
15 opinion carries more weight than an examining physician's, and an examining
16 physician's opinion carries more weight than a non-examining physician's.
17 *Holohan*, 246 F.3d at 1202. The regulations also acknowledge "other sources,"
18 such as counselors and nurse practitioners. 20 C.F.R. 404.1527(f).

1 **1. The ALJ offered sufficient reasons for rejecting treating**
2 **rheumatologist Dr. James Byrd.**

3 If a treating doctor’s opinion is contradicted by another doctor’s opinion—as
4 Dr. Byrd’s is—an ALJ may only reject it by providing “specific and legitimate
5 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
6 1211, 1216 (9th Cir. 2005). An ALJ satisfies the “specific and legitimate” standard
7 by “setting out a detailed and thorough summary of the facts and conflicting
8 clinical evidence, stating his interpretation thereof, and making findings.” *Garrison*
9 *v. Colvin*, 759 F.3d 995, 1012 (9th Cir. 2014) (internal quotation marks omitted).

10 Plaintiff’s treating rheumatologist, Dr. James Byrd, completed a one-page
11 medical source statement on January 23, 2017, in which he checked a box
12 indicating he did not believe Plaintiff was capable of performing “any type of work
13 on a reasonably continuous sustained basis.” AR 914.

14 The ALJ assigned little weight to Dr. Byrd’s opinion, noting Dr. Byrd cited
15 no objective evidence and offered no explanation to support his opinion. AR 24.
16 The ALJ further found Dr. Byrd’s opinion to be inconsistent with his own exam
17 findings and inconsistent with the overall medical evidence of record. *Id.* An ALJ
18 may appropriately consider the amount of explanation a medical source provides
19 for a stated opinion, and that opinion’s consistency with the source’s records and
20 the record as a whole. 20 C.F.R. § 404.1527(c)(3)-(4). Dr. Byrd provided no

1 explanation for his opinion that Plaintiff was not capable of performing any level
2 of work, and did not even complete the box on the form asking him to specify what
3 Plaintiff's primary diagnosis was. AR 914. The ALJ also reasonably discussed the
4 medical evidence throughout the decision, noting normal or mild objective findings
5 that were inconsistent with Dr. Byrd's unexplained conclusion that Plaintiff was
6 incapable of performing work at any exertional level. The ALJ offered sufficient
7 specific and legitimate reasons for discounting this opinion.

8 **2. The ALJ adequately explained his rejection of examining**
9 **psychologist Greg Sawyer, PhD.**

10 As with treating physician opinions, an ALJ may discount the contradicted
11 opinion of an examining doctor by identifying "specific and legitimate reasons" for
12 the rejection. *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1995).

13 Plaintiff attended a consultative psychological exam with Dr. Sawyer on
14 May 15, 2015. AR 595. Dr. Sawyer concluded Plaintiff's diagnoses included major
15 depressive disorder, currently in partial remission secondary to medication, and
16 PTSD. AR 600. He opined Plaintiff would have difficulty in a number of work-
17 related functional areas, including: performing detailed and complex tasks;
18 accepting instructions; understanding, carrying out, and remembering complex and
19 one or two-step instructions; performing work activities on a consistent basis
20 without special or additional instructions; sustaining concentration and persisting

1 in work-related activity at a reasonable pace; and dealing with the usual stresses
2 encountered in the workplace. AR 601-02. Dr. Sawyer thought Plaintiff would not
3 have difficulty managing funds, performing simple and repetitive tasks,
4 maintaining effective social interactions in the workplace, maintaining regular
5 attendance, and completing a normal workweek without interruptions. AR 601.

6 The ALJ gave this opinion partial weight, noting it to be partially consistent
7 with the record, but finding the opinion regarding difficulty with instructions and
8 sustained concentration and persistence to be inconsistent with the evidence. AR
9 23-24. The consistency of an opinion with the record as a whole is a specific and
10 legitimate factor for the ALJ to consider. 20 C.F.R. § 404.1527(c)(4). While the
11 discussion does not specify the inconsistencies he found, the ALJ's discussion of
12 the mental health records notes multiple normal or mild objective exam findings
13 with good attention span, and he noted Plaintiff's improvement in his mental health
14 symptoms after starting treatment in 2016. AR 22-23. Even when an agency
15 "explains its decision with 'less than ideal clarity,'" we must uphold it "if the
16 agency's path may reasonably be discerned." *Molina v. Astrue*, 674 F. 3d 1104,
17 1121 (9th Cir. 2012) (quoting *Alaska Dep't of Env'tl. Conservation v. EPA*, 540
18 U.S. 461, 497 (2004)). Read as a whole, the ALJ's decision identifies evidence that
19 is inconsistent with Dr. Sawyer's conclusions. The ALJ therefore offered adequate
20 rationale for his decision to give the opinion only partial weight.

1 **3. The ALJ did not err in giving only some weight to Plaintiff’s**
2 **counselor Suzanne Damstedt.**

3 Importantly, the “specific and legitimate” standard discussed above only
4 applies to evidence from “acceptable medical sources.” *Molina*, 674 F.3d at 1111.
5 “Other sources” for opinions—such as nurse practitioners, physician’s assistants,
6 therapists, teachers, social workers, chiropractors, and other nonmedical sources—
7 are not entitled to the same deference as acceptable medical sources. *Id.*; *Dale v.*
8 *Colvin*, 823 F.3d 941, 943 (9th Cir. 2016); *see* 20 C.F.R. § 404.1527(f). An ALJ
9 may discount a non-acceptable medical source’s opinion by providing reasons
10 “germane” to each witness for doing so. *Popa v. Berryhill*, 872 F.3d 901, 906 (9th
11 Cir. 2017); *Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993).

12 On January 26, 2017, Plaintiff’s treating counselor, Ms. Damstedt,
13 completed a medical source statement regarding Plaintiff’s mental capabilities. AR
14 950-52. She found him to be unlimited in most work-related areas of functioning,
15 but found him moderately limited in working in coordination with or proximity to
16 others without being distracted by them; in completing a normal workday or
17 workweek without interruptions from psychologically-based symptoms and
18 performing at a consistent pace without an unreasonable number and length of rest
19 periods; and in getting along with coworkers or peers without distracting them or
20 exhibiting behavioral extremes. AR 951.

1 The ALJ gave this opinion some weight, but noted the treatment notes
2 showed progressive improvement in symptoms and overall mental health stability.
3 AR 24. The consistency of an opinion with the record as a whole, including the
4 progression of a condition and response to treatment, is a germane factor for an
5 ALJ to consider in weighing evidence. 20 C.F.R. 404.1527(f). The Court finds the
6 ALJ's conclusion is reasonable and supported by substantial evidence. He
7 therefore offered a germane reason for discounting the assessed limits.

8 **4. The ALJ did not improperly rely on the state agency doctors.**

9 Plaintiff asserts the ALJ erred in relying on and giving significant weight to
10 the opinions from the state agency doctors, as their opinions were offered prior to
11 submission of the majority of the records, with doctors being unaware of Plaintiff's
12 fibromyalgia diagnosis, treatment for mental health, and repeated hospitalizations
13 for his hernias. ECF No. 14 at 14-15.

14 Plaintiff fails to assert any specific legal error with respect to this point. The
15 ALJ reviewed the record and all opinions, and found the state agency opinions to
16 be consistent with the records from the time they were completed, but based on
17 subsequent records, found additional limitations to be warranted. AR 24. An
18 opinion offered early in the process can continue to be accurate even with the
19 addition of more evidence. Plaintiff has not identified any specific portion of the
20 state agency opinions that is unreliable; he simply argues for an alternative

weighing of the factors that contribute to an opinion's reliability. The ALJ adequately explained his analysis with respect to the state agency opinions.

C. The ALJ did not err in the evaluation of Plaintiff's obesity

Social Security Ruling 02-1p³ provides guidance on the evaluation of obesity in disability claims. The ruling makes clear that obesity must be considered at each step of the sequential process, including its potential to complicate other conditions of the cardiovascular, respiratory, and musculoskeletal systems, along with mental health. SSR 02-1p.

Plaintiff argues the ALJ failed to abide by this ruling in making the step four and five evaluations, and argues the decision does not indicate whether or to what extent the ALJ considered the effects of obesity. ECF No. 14 at 15-17.

Plaintiff fails to identify any legal error. The ALJ found obesity to be a severe impairment, considered SSR 02-1p at step three, and discussed Plaintiff's morbid obesity throughout the discussion of the medical evidence. AR 18, 20-23. Plaintiff does not identify any credited limitation relating to obesity that the ALJ did not account for in the RFC. The ALJ appropriately considered the impact of obesity.

D. The ALJ did not improperly reject Plaintiff's subjective complaints

³ This ruling has recently been rescinded by the Agency, but was in effect at the time of the ALJ's decision.

1 Plaintiff argues the ALJ erred by discounting the credibility of his testimony
2 regarding his subjective symptoms. ECF No. 14 at 17-18. Specifically, he argues
3 that the normal objective findings identified by the ALJ do not reflect on the
4 severity of his fibromyalgia and obesity, and he asserts the ALJ made no mention
5 of Plaintiff's multiple surgeries and reoccurring hernias. *Id.*

6 An ALJ engages in a two-step analysis to determine whether a claimant's
7 testimony regarding subjective symptoms is credible. *Tommasetti v. Astrue*, 533
8 F.3d 1035, 1039 (9th Cir. 2008). First, the claimant must produce objective
9 medical evidence of an underlying impairment or impairments that could
10 reasonably be expected to produce some degree of the symptoms alleged. *Id.*
11 Second, if the claimant meets this threshold, and there is no affirmative evidence
12 suggesting malingering, the ALJ can reject the claimant's testimony about the
13 severity of his symptoms only by offering "specific, clear, and convincing reasons"
14 for doing so. *Id.*

15 In weighing a claimant's credibility, the ALJ may consider many factors,
16 including, "(1) ordinary techniques of credibility evaluation, such as the claimant's
17 reputation for lying, prior inconsistent statements concerning the symptoms, and
18 other testimony by the claimant that appears less than candid; (2) unexplained or
19 inadequately explained failure to seek treatment or to follow a prescribed course of
20 treatment; and (3) the claimant's daily activities." *Smolen v. Chater*, 80 F.3d 1273,

1 1284 (9th Cir. 1996). While it may not constitute the sole reason for discounting
2 subjective complaints, objective medical evidence is a “relevant factor in
3 determining the severity of the claimant’s pain and its disabling effects.” *Rollins v.*
4 *Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

5 Here, the ALJ found that the medically determinable impairments could
6 reasonably be expected to produce some degree of the symptoms Plaintiff alleged.

7 AR 20. However, the ALJ determined that Plaintiff’s statements concerning the
8 intensity, persistence, and limiting effects of his symptoms were not entirely
9 consistent with the medical evidence and other evidence in the record. *Id.*

10 Specifically, the ALJ found Plaintiff’s physical complaints exceeded the objective
11 medical evidence of record, his mental health conditions improved with medication
12 and objective findings were largely mild or normal, he reportedly stopped working
13 due to a lay off rather than his medical problems, and his documented daily
14 activities exceeded his testimony. These are all relevant factors for an ALJ to
15 consider in assessing the reliability of a claimant’s subjective reports.

16 Plaintiff offers no challenge to the majority of the reasons given by the ALJ.
17 Plaintiff primarily reasserts his arguments regarding fibromyalgia and obesity,
18 arguing for an alternative interpretation of the medical evidence. He has failed to
19 demonstrate that the ALJ’s interpretation of the record was wrong. “If the evidence
20 can reasonably support either affirming or reversing a decision, we may not

1 substitute our judgment for that of the Commissioner.” *Lingenfelter v. Astrue*, 504
2 F.3d 1028, 1035 (9th Cir. 2007) (internal quotes and citation omitted). When an
3 ALJ presents a reasonable interpretation that is supported by substantial evidence,
4 as here, it is not the Court’s role to second-guess it.

5 **E. The ALJ did not Err at Step Five**

6 Plaintiff argues that the vocational expert’s testimony carries no evidentiary
7 value due to the ALJ’s rejection of the above-discussed medical evidence and
8 Plaintiff’s own testimony. ECF No. 14 at 18-19. As the Court found no error
9 above, the ALJ’s findings are upheld. *Stubbs-Danielson v. Astrue*, 539 F.3d 1169,
10 1175-76 (9th Cir. 2008).

11 **VIII. Order**

12 Having reviewed the record and the ALJ’s findings, the Court finds the
13 ALJ’s decision is supported by substantial evidence and is free from legal error.

14 Accordingly, **IT IS ORDERED:**

- 15 1. Plaintiff’s Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.
16 2. Defendant’s Motion for Summary Judgment, **ECF No. 15**, is **GRANTED**.

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1 3. Judgment shall be entered in favor of Defendant and the file shall be

2 **CLOSED.**

3 **IT IS SO ORDERED.** The District Court Executive is directed to enter this Order,
4 forward copies to counsel, and close the file.

5 **DATED** this 6th day of November 2019.

6
7 *s/Robert H. Whaley*
8 **ROBERT H. WHALEY**
9 Senior United States District Judge
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